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ZNR UUUUU ZZH
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FM AMEMBASSY KATHMANDU
TO RUEHC/SECSTATE WASHDC IMMEDIATE 1164
INFO RUEHBJ/AMEMBASSY BEIJING PRIORITY 7237
RUEHLM/AMEMBASSY COLOMBO PRIORITY 7578
RUEHKA/AMEMBASSY DHAKA PRIORITY 2922
RUEHIL/AMEMBASSY ISLAMABAD PRIORITY 5619
RUEHLO/AMEMBASSY LONDON PRIORITY 6715
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 3387
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RHEFDIA/DIA WASHDC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RUEKJCS/SECDEF WASHDC PRIORITY
RUCNDT/USMISSION USUN NEW YORK PRIORITY 3763

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STATE FOR INL, SCT, EEB AND SCA/INS
JUSTICE FOR AFMLS, OIA AND OPDAT
TREASURY FOR FINCEN

E.O. 12958: N/A

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SUBJECT: NEPAL: DRAFT 2009 INTERNATIONAL NARCOTICS CONTROL
STRATEGY REPORT (INCSR) PART II - MONEY LAUNDERING AND
FINANCIAL CRIMES

REF: STATE 114962

Summary

1. Nepal is not a regional financial center and there are no indications that the country is used as an international money laundering center. In January 2008, the Government of Nepal (GON) for the first time passed legislation on anti-money laundering. There were no prosecutions or arrests for money laundering during 2009.

Limited Black Market for Smuggled Goods

2. There is not a significant black market for smuggled goods in the country; however, organized crime groups are involved in smuggling. Nepalese traders in most cases fund the consumer goods, food stuff, fertilizers and construction materials traditionally smuggled into Nepal from India and Tibet. There are no reports that narcotics or other illicit proceeds fund these items.

Limited Reports of Money Laundering and Financial Crimes

3. Since the creation of the Financial Information Unit, within the Nepal Rastra Bank (NRB) in 2008, commercial banks have begun reporting cases of suspected money laundering. Reports suggest that hawala operators based in Hong Kong and Persian Gulf countries work as a parallel banking system, but these operators are chiefly involved in transferring remittances from workers in the Gulf and other Asian countries as well as funds for Nepalese traders dealing in foreign merchandise. There have been no reported cases of Nepalese financial institutions engaging in currency transactions involving international narcotics trafficking proceeds.

Not an Offshore Financial Center or Free Trade Zone

¶4. Nepal is not an offshore financial center. Offshore banks, international business companies, or other forms of exempt or shell companies and trusts are not permitted in the country. There are no free trade zones in Nepal.

New Law Targets Money Laundering, Financing of Terrorism

¶5. The GON passed its first law, the Anti-Money Laundering Act targeting money laundering in January 2008. The new law formally criminalized money laundering, previously addressed in provisions of the Foreign Exchange Act of 1962 and the Bank and Financial Institutions Act of 2006. Further legislation on mutual legal assistance and witness protections—developed as part of the GON's Master Plan for Drug Abuse Control—remained stalled in 2008. There were no prosecutions or arrests for money laundering in 2009.

¶6. There are no secrecy laws in Nepal that prevent disclosure of client and ownership information by domestic and offshore financial services companies to bank supervisors and law enforcement authorities. The Anti-Money Laundering Act of January 2008 established a Financial Information Unit within Nepal Rastra Bank (NRB), the central bank of Nepal.

Central Bank Monitors Financial Sector for Abnormalities

¶7. NRB is the regulator of all banks and financial

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institutions in Nepal. NRB supervises compliance with all Nepalese laws, international conventions and agreements pertaining to any kind of financial crime, terrorist financing, or irregularity. The NRB has issued a directive called "know your customer" compelling banks and other financial institutions to record and report the identity of all customers and notify the NRB about customers engaging in significant transactions. Foreign exchange is regulated in Nepal, and the NRB must grant clearance for any significant transaction. The NRB's controls extend to all banking and non-bank financial institutions, including exchange houses, stock brokerages, cash couriers, casinos, dealers in jewels and precious metals, and insurance companies, as well as intermediaries such as lawyers, accountants, and brokers. Banks and financial institutions must report suspicious activity to the NRB. The NRB then makes recommendations to the appropriate government body to file a case with the courts. Cooperation between reporting individuals and law enforcement entities is kept highly confidential; however, there are no specific laws protecting the reporting individuals. The NRB receives hundreds of suspicious transaction reports, few of which are deemed credible enough for further investigation.

FIU and Other Entities Investigate Financial Crimes

¶8. An independent Financial Information Unit (FIU) was established within the NRB in 2008 and has authorization to investigate money laundering and terrorist financing, previously the responsibility of several government bodies. The NRB may pursue prosecution of any bank or financial institution. The supervisory departments of the NRB have access to the records and databases of financial institutions. To access the records of other government entities, the NRB must seek permission from the appropriate government entity—either the concerned ministry or the Cabinet—or forward the matter to the Commission for the Investigation of Abuse of Authority (CIAA). The CIAA is a constitutional body mandated to investigate any irregularity or financial crime in any government entity. The Nepal Police have the authority to handle arrests and file cases in the appellate court. There were no arrests or prosecutions for money laundering or terrorist financing in 2009.

No Reports of International Terrorist Ties

¶9. The GON passed the Money Laundering Prohibition Bill on January 14, 2008, criminalizing the financing of terrorism as required by the United Nations Security Council Resolution ¶1373. Terrorism and terrorist financing previously were prosecuted under other criminal laws, including the Terrorist and Destructive Acts (Control and Punishment) Ordinance of 2004, which is no longer in force.

¶10. The NRB circulates to financial institutions the list of individuals and entities included on the UN 1267 sanctions committee's consolidated list as being linked to Usama bin Laden, al-Qa ida, or the Taliban. The NRB also circulates the list of financiers the United States or European Union has designated under relevant authorities. The NRB has not reported any accounts or assets of terrorist organizations or individuals in Nepal.

Alternative Remittance Systems Acknowledged

¶11. The GON acknowledges the existence and use of indigenous alternative remittance systems (called "hundi" in Nepal) that bypass financial institutions. In order to regulate these

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systems, the NRB, under the Foreign Exchange Act of 1962 and the Bank and Financial Institutions Act of 2006, has granted licenses to financial institutions and money exchangers allowing trade in foreign exchange. Any unauthorized transaction of foreign exchange is considered a crime, but the NRB and law enforcement agencies such as the police and Department of Customs have very little effective control on unauthorized remittances, trade-based money laundering, cross-border cash smuggling, or the misuse of gold, precious metals and gems.

No Special Efforts To Thwart Misuse of Charitable Entities

¶12. The GON has made no special effort nor drafted legislation to thwart the misuse of charitable and non-profit entities that could be used as conduits for the financing of terrorism. Local law enforcement agencies such as the District Administration Office and the District Police Office in theory monitor and supervise their sectors for potential terrorist financing but in practice lack the resources to do so. The NRB regulates all transfers or transactions in foreign exchange, and police and the Customs Department monitor physical smuggling of foreign currencies.

Cross-Border Transportation of Currency

¶13. The NRB formulates statutory requirements to limit and monitor the cross-border transportation of currency and monetary instruments, although an open border with India renders enforcement efforts ineffective. There is no limitation on inbound cross-border transportation of currency, but the cash courier or entity must declare the amount of money, source and purpose of bringing the money into Nepal. Declaration forms are available at border crossings. Foreign nationals and entities must show the entry declaration form to transport currency out of Nepal. The source of monetary instruments must be declared. Nepalese nationals may take a maximum of USD 2,000 if traveling to any country other than India. Travelers must declare the source and purpose of currency in excess of this amount. Nepalese nationals traveling to India may carry a maximum of 16,000 Indian rupees (approximately USD 300-400). Travelers must declare the source and purpose of currency in excess of this amount.

Limited Exchange of Information About Cash Smuggling

¶14. The Nepal Police and the NRB are authorized to keep tandem records of cash smuggling; however, no database or information-sharing mechanism exists among host government agencies. Information about cash smuggling is shared among government agencies and with foreign governments by request only. In practice, Nepalese government and law enforcement entities cooperate very little.

Provisions for Asset Seizures Exist

¶15. Nepal does not have specific legislation for identifying, tracing, freezing, seizing, and forfeiting assets derived from or intended for narcotics, terrorism, or serious crimes. The seizure of assets is addressed in a number of other policies, including the anti-money laundering act passed in 2008, although with questionable efficacy. Nepal has not enacted laws for the sharing of seized assets with other governments, but various GON agencies reportedly are engaged in negotiations with other governments to enhance asset tracing, freezing and seizure.

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¶16. The government may freeze assets through regular law enforcement mechanisms applied to other criminal proceedings.

The Narcotic Drugs Control Act of 1976 allows for the seizure of assets and instruments used in or gained from the manufacture or production of narcotics. This includes all movable and immovable property. The GON may also pursue asset seizure under the Foreign Exchange Act of 1962 and the Bank and Financial Institutions Act of 2006, but there have been no reported cases through 2009. The NRB is responsible for tracing, seizing, and freezing assets within the banking system of Nepal. The Nepal Police is responsible for tracing, seizing, and freezing assets related to narcotics sales and transportation. Assets may be frozen for three months without a court case. Frozen assets may be confiscated by a court's verdict only, after which it becomes the property of the cabinet in the GON. There is no asset forfeiture fund. Cash and valuable metals are deposited in the GON's account in the NRB. The Home Ministry and police auction seized vehicles, and the Land Tenure Office is responsible for the sale of seized land and buildings. All proceeds go to the GON's account but are not shared with police.

¶17. The banking community cooperates with enforcement efforts to trace and seize bank accounts. Existing laws allow for civil as well as criminal forfeiture. The government in theory enforces existing asset seizure and forfeiture laws, and police have the power and resources to trace, seize, and freeze assets without undue delay. However, rampant corruption and a culture of graft in law enforcement agencies and the judicial system means in most cases the accused are either acquitted or successful in mitigating the charges. Post has no data regarding the dollar amount of any narcotics-, terrorist- or criminal-related assets frozen, seized, or forfeited in 2009.

International Cooperation

¶18. The GON has issued directives that allow for the exchange of records with the United States on investigations and proceedings related to narcotics, all-source money laundering, terrorism and terrorist financing. However, Nepal has neither adopted related laws or regulations nor signed any treaties with the United States or other countries. The FIU signed a memorandum of understanding with its counterpart in Bangladesh in October 2008, but there is no agreed mechanism with the United States or any other country for the exchange of records connected to the

aforementioned investigations and proceedings. The GON has expressed to the United States willingness to establish an exchange mechanism. Nepal has been willing to cooperate with U.S. requests regarding the investigation of financial crimes, and promptly circulates to all banks and financial institutions UN and U.S. terrorist finance designations.

¶19. Nepal is party to the UN International Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention). Nepal has signed but not ratified the UN Convention Against Transnational Organized Crime (Palermo Convention) and the UN Convention Against Corruption. Nepal has not signed the UN International Convention for the Suppression of the Financing of Terrorism or any other applicable agreements and conventions. Nepal adheres to all relevant international money laundering standards but not by systematic implementation of various international declarations. The NRB issues directives to banks and financial institutions to implement specific recommendations on a case-by-case basis.

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